**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**APPEAL FROM ORDER NO.233 OF 2007**

Kunhi Madathil Anwar & ors ...Appellants

vs.

Maharashtra Housing and Area Development Authority ...Respondent

Mr.Y.H.Muchhala, Sr.Advocate, Ms Hansa I. Advani and Mr.Farooq A.Chowdhary i/b Mr.Sagheer A.Khan for the Appellants
Mr.V.R.Parshurami for the Respondent.

**CORAM: A.S.OKA,J.**
**DATE : JUNE 16, 2007.**

**P.C.:**

1. Heard Counsel appearing for the parties. The Appellants are the original Plaintiffs. The Appellants have taken exception to the order dated 8th march 2007 passed by the learned Trial Judge by which a Notice of Motion for temporary injunction filed by the Appellants has been rejected. The prayer in the suit filed by the Appellants is for declaration that the Respondent/Defendant has no right to interfere with the possession of the Appellants over the suit premises.

2. My attention has been invited to the Affidavit of one Shri Ramesh Rajaram Shinde, Executive Engineer of the Respondent which is filed on 7th June 2007. Paragraphs 4 and 5 of the said Affidavit read thus :

"4. I say that at the threshold, the Plaintiffs have no

locus-standi to file maintain and pursue S.C.Suit No.1838 of 2005 and incidentally the miscellaneous proceedings taken out by them. I say that as per the obligation cast upon this Respondent under section 91 r.w. Section 90 r.w. Section 51 r.w. sub-section 25 of section 2 of the said Act this Respondent is under the legal obligation to get Vishnu Bhavan vacated, provide for transit accommodation to the occupier and provide them premises ranging between 225 sqft. (carpet) - maximum of 750 sqft. (carpet) for residential and in so far as commercial premises are concerned the same as of occupied by them would be provided in reconstructed building.

5. I respectfully submit that in view of whatever stated hereinabove, this Respondent will issue notice under Section 51 to the occupiers of the building forthwith inter-alia asking them to vacate the premises occupied by them in Vishnu Bhavan and provide them with transit accommodation on due verification of their proof of occupancy of the premises. I say that due to ensuing monsoon and due to unreasonable and adamant behaviour adopted by the occupant of Vishnu Bhavan inordinate delay is caused to complete the project of reconstruction for housing the occupiers 80 in number of Dandekar, Pevekar and Vishnu Bhavan."

3. Shri Parshurami appearing for the Respondent on instructions of the concerned Officer states that the Respondent will follow the process of law as contemplated by section 51 of the Maharashtra Housing and Area Development Authority Act,1976 (hereinafter referred to as the said Act of 1976). He stated that if after following the procedure under section 51 of the said Act of 1974 if any occupier of the building fails to accept and occupy the alternate accommodation allotted to him within 45 days from the date of allotment, the responsibility of the Authority to provide him with such accommodation shall cease. He stated that in the event an occupier fails to shift to the alternate accommodation provided to him, the Respondent will follow due process of law for evicting the occupier. Statements made by the Respondent in paragraphs 4 and 5 of the Affidavit as well as the statements made by the learned Advocate for the Respondent are accepted. In view of the said statements, it is not necessary to grant any ad-interim or interim injunction in favour of the Appellants. In view of these statements, it is obvious that there is no apprehension of illegal dispossession.

4. By the impugned order, the Notice of Motion for temporary injunction has been dismissed. It is obvious that the

observations made by the learned Trial Judge in the impugned order are only prima facie or tentative observations and the pending suit will be decided by the learned Trial Judge without being influenced by the said observations.

5. Accordingly, I pass the following order :

i) Statements made by the Respondent in the aforesaid Affidavit as well as the statements made by the learned Counsel for the Respondent which are recorded in this order are accepted.

ii) In view of the said statements, Appeal is disposed of with no order as to costs.

iii) Parties to act upon an authenticated copy of this order.

**JUDGE**